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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,979	03/19/2004	Raymond Bede Neale	Q80314	6480
23373	7590	11/18/2005	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			BRUNSMAN, DAVID M	
			ART UNIT	PAPER NUMBER
			1755	

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,979

Applicant(s)

NEALE ET AL.

Examiner

David M. Brunsman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-54 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413).
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, 15, 16, 18, 25-28, 41, 43-45 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis in claim 1 for the term "flour" in claim 15. Claims 1, 4, 18, 25-28, 43-45 and 48 recite particular "centapoise" values. That term is undefined in the instant specification or related prior art. For purposes of examination, it has been treated as equivalent to "centipoises". Claims 16 and 41 are indefinite in that they appear not to further limit the base claims in that they recite plant protein from the same or other plant species, thus reciting every other possible source.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-17, 19-42 and 46-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6517625.

The reference teaches improved compositions for coating paper stock (including cardboard/fiberboard) obtained by oxidizing an aqueous mixture at pH 11.3 of wheat protein (albumin, globulin, gliadin and glutenin) and wheat starch. (Midsol 50, wheat starch contains 23-28% amylose (waxy); the combination of wheat starch and wheat protein is patentably indistinguishable from wheat flour) with heating to 73-74 F to form a coating composition at pH of 10.3 having a viscosity of 80cP and a solids content of 35%. Wherein 19% of the starch/protein mixture is protein.

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Column 3, lines 29-30 teach a final pH of 9-12 is obtained. The pH range of the instant claims and that of the reference overlap at 9. It would have been obvious to one of ordinary skill in the art to employ a pH of 9 because the ranges overlap. See, *In re Malagari*, 182 USPQ 549. Claims 19 and 47 recite drying the aqueous composition to a flowable particulate. It would have been obvious to one of ordinary skill in the art to dry the product of the reference to solids because incorporation or removal of a carrier or diluent has been held to have been obvious. See, *In re Lerner*, 169 USPQ 51 and *In re Rosicky*, 125 USPQ 341. Claim 28 recites an upper viscosity limit of 60cP. The viscosity range of the instant claims and that of the reference overlap at 60, see column 2, line 62. It would have been obvious to one of ordinary skill in the art to employ a viscosity of 60cP because the ranges overlap. See, *In re Malagari*, 182 USPQ 549. Claim 29 recites an upper pH limit of 8.8. A pH of 8.8 is indistinguishable from the lower limit of "9" in the reference.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 4, 18, 43, 44 and 45 are would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. The prior art of record fails to teach or suggest the recited time/temperature profiles of these claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Brunsman whose telephone number is 571-272-1365. The examiner can normally be reached on M, W, F, Sa; 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David M Brunzman
Primary Examiner
Art Unit 1755

DMB

A handwritten signature in black ink, appearing to read 'David M Brunzman', with a long horizontal flourish extending to the right.